

OUT OF PROGRAM AGREEMENT

THIS OUT OF PROGRAM AGREEMENT ("Agreement") by and between [Russ Darrow Group, Inc.], hereinafter known as the "Developer," and the City of Milwaukee, a municipal corporation, hereinafter known as "City";

WITNESSETH:

WHEREAS, the Developer is the owner of a certain parcel of real estate located on Metro Boulevard in Milwaukee, Wisconsin, and more particularly described on Exhibit A (the "Property"), which is attached hereto and incorporated herein; and

WHEREAS, the Developer has commenced construction of an automobile dealership on the Property (the "Project"); and

WHEREAS, the Property is located adjacent to and across from other automobile dealerships also located on Metro Boulevard (together with the Project, collectively referred to as the "Metro Dealerships"); and

WHEREAS, the City and the owners of the Metro Dealerships believe it to be in the best interests of the Metro Dealerships and the tax base of the City to provide direct access to Metro Boulevard from Good Hope Road by constructing a public street across the Property connecting Good Hope Road and Metro Boulevard (the "New Street"); and

WHEREAS, in order to connect the New Street to Good Hope Road, the Wisconsin Department of Transportation ("DOT") must agree to modify or eliminate DOT's restriction prohibiting access to Good Hope Road from the Property (the "Access Restriction"); and

WHEREAS, the Developer has requested that DOT release the Access Restriction and has provided traffic studies and other information to DOT in support of such request; and

WHEREAS, notwithstanding that DOT has not yet agreed (and may not agree for an extended period of time) to release the Access Restriction, the Developer desires to construct the New Street to the point where the Property abuts the right-of-way boundary for Good Hope Road and the City is supportive of such action; and

WHEREAS, the Developer has accordingly requested an agreement with the City that provides for installation of the New Street and the related public improvements (collectively, the "Public Improvements") for the benefit of the Property and the Metro Dealerships; and

WHEREAS, the Public Improvements may be installed under the terms of this Agreement upon condition that title to the Public Improvements shall vest in the City subject to conditions more fully stated hereinafter; and

WHEREAS, the Developer has requested that the design and construction of the Public Improvements be completed by the Developer because of time constraints to meet the construction schedule of the Project.

NOW, THEREFORE, In consideration of these premises and the mutual benefits herein accruing and for other good and valuable consideration, it is agreed, by and between the parties hereto that:

1. Funding Obligation. Subject to paragraph 17 herein, the Developer agrees to provide all funds necessary for design and construction of the Public Improvements, including, but not limited to, rights-of-way, paving, sewer, water mains and laterals, lights, easement preparation as may be required, water fittings, materials inspections, construction inspections and any related City work.

2. Developer to Design Public Improvements. The Developer shall let and administer one or more design contracts for the sewer, water, and paving infrastructure required to serve the Property. Plans shall be prepared to City specifications and approval by the Commissioner of the Department of Public Works (the "Commissioner") of all such plans shall be required prior to commencement of any work on the Public Improvements. All City costs associated with review of plans prepared by others shall be the Developer's responsibility.

3. Construction Option. The Developer will let and administer construction contracts for all of the Public Improvements covered by this Agreement and City shall perform its normal inspections during the course of construction. The Developer agrees to comply with and administer on behalf of the City all applicable City rules and requirements pertaining to bidding, Emerging Business Enterprises (Chapter 370) and prevailing wages with respect to not less than the amount of work funded by the City's payment under paragraph 17.

4. Site Grading. The Developer agrees to pre-grade the New Street. Grading plans shall be reviewed and approved by the Commissioner and must be approved prior to design engineering of the Public Improvements. Grading shall be within three (3) inches of the roadway sub-grade as established in the paving plans. Grading shall match design grades at the right-of-way line. Material in any fill areas shall be placed in accord with Section 401.5 of the City of Milwaukee Department of Public Works' Street Construction Specifications dated July 1, 1992. The Developer is responsible for obtaining any and all permits required to undertake grading activities. The parties acknowledge that the City has allowed the Developer, by separate permit, to fill a portion of the City's Good Hope Road right-of-way located to the north of and immediately adjacent to the Property.

5. Water Improvements. Water main will be installed in the New Street to serve the Property. Per paragraph 2, plans for water main improvements shall be prepared by the Developer. The estimated costs to review the plans and to inspect the water improvements are as follows:

Plan Review	\$2,500
Inspection & related activities	\$7,000

The Developer shall provide the required water fittings and is responsible for obtaining the required State of Wisconsin Department of Natural Resources Water Main Installation permit. The City will provide the flow test information required as part of the permit application. The City shall perform the Safe Water test, and shall be responsible for pressure testing the new main and developing as-built drawings and records.

6. Sewer Improvements. Storm sewers will be installed in the New Street. Per paragraph 2, plans for storm sewers shall be prepared by the Developer. The estimated costs to review the sewer plans is as follows:

Plan Review	\$1,500
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Review and approval of the sewer plans by the Milwaukee Metropolitan Sewerage District is required.

7. Paving Improvements. The New Street design shall include a base course and concrete and pavement concrete curb and gutter.

Per paragraph 2 above, plans for paving improvements shall be prepared by the Developer. The estimated costs to review the plans and to inspect the paving improvements are as follows:

Plan Review	\$2,000
Inspection	\$15,000

8. Utility Laterals. Sanitary sewer and water laterals shall be installed by the Developer under permit from the City's Department of Neighborhood Services. The Neighborhood Services Department shall inspect the work. The cost of laterals shall be borne by the Developer.

9. Street Lights. The Property will have public street lights that will be designed and installed by the City. The Developer agrees to fund all costs related to the finishing and installation of such. Estimated cost of Engineering is \$5,000 and Labor and Material cost is \$30,000.

10. Storm Water Management Plan. A Storm Water Management Plan for the Project must be submitted for review and approval by the City Engineer. Any storm water management improvements required in conjunction with the Property shall be constructed by the Developer.

11. Total Estimated City Costs. The total estimated City costs for engineering, labor, materials and inspections is \$63,000.

12. Other Improvements. The Developer agrees that any utility and access improvements necessary to serve the Property in addition to those listed above shall be its responsibility and shall be undertaken by the Developer at its sole expense. The Developer further agrees that the City shall review and approve plans for any work to occur in the New Street. Permits necessary for any such work shall be obtained by the Developer or other responsible parties.

13. Easements. The Developer agrees to provide, where necessary and at no cost to the City, all easements or dedications required to construct, operate and maintain the Public Improvements. It shall be the Developer's responsibility to obtain any permits and/or easements or other property rights necessary for the operation and maintenance of the storm water management system and outlets, as approved.

14. Private Utilities. The Developer shall be responsible for coordinating the installation of all private utility lines necessary to provide telephone communications, electrical, and gas services to the Project.

15. Funding Guarantee for Construction. A letter of credit submitted by the Developer has been approved by the City in an amount equal to the estimated City costs referenced in paragraph 11 (the "City Costs LOC"). A copy of the City Costs LOC is attached hereto as Exhibit B and incorporated herein. The amount of the City Costs LOC may be reduced periodically to reflect payments made to the City. Any such reductions shall be approved by the Commissioner.

16. Inspections. Both parties agree that all materials furnished and all work performed hereunder shall conform to all regulations and specifications of the City and the Commissioner and shall be subject to inspection by the Department of Public Works. All engineering and inspection costs incidental to the installation of the Public Improvements covered by this Agreement shall be subject to the terms of this Agreement, the cost of such service when furnished by City being established as the wages of the person or persons engaged in such work plus all costs of overhead.

17. Ownership of Public Improvements and Partial Reimbursement of Costs. It is understood and agreed by both parties hereto that, upon completion of the Public Improvements, title to all Public Improvements installed under the terms of this Agreement shall be conveyed to and vested in the City, and that the City will accept the obligation of operation and maintenance of all such Public Improvements in accordance with the standard practice. At the time of conveyance of the Public Improvements to the City, the City shall pay to the Developer the amount of \$250,000 as partial reimbursement toward the costs of the Public Improvements.

18. Prevailing Wages. The Developer shall comply with the prevailing wages requirements set forth on Exhibit C attached hereto.

19. City Ordinances and Regulations. City warrants that all work shall be undertaken in accord with City standard and customary public works contracting procedure unless such work is to be undertaken by City Forces or by the Developer per

paragraph 3. It is further understood and agreed that this Agreement is subject to all City ordinances and regulations and nothing herein shall be deemed to waive or supersede such requirements.

20. Future Connection to Good Hope Road. If and at such time as the Developer obtains approval from the DOT to connect the New Street to Good Hope Road on terms and conditions acceptable to the City, DOT and the Developer, the Developer shall, at its sole cost and expense, complete the extension of the New Street to Good Hope Road. At such time, the City and the Developer shall amend this Agreement to broaden the scope of the Public Improvements to include the extension of the New Street and the Developer shall undertake and complete such extension in accordance with the terms of this Agreement as amended.

21. Assignment. The Developer shall have the right to assign its rights and obligations under this Agreement to an entity owned or controlled by the Developer or the owner of Developer or to an entity comprised of the Developer and one or more of the other owners of the Metro Dealerships.

THIS AGREEMENT, drafted by the City, shall be binding upon the Developer, its lessees, successors and assigns, and upon the City, its successors and assigns.

DEVELOPER

IN WITNESS WHEREOF, the Developer has caused this Agreement to be signed and sealed this ____ day of _____, 2012.

[RUSS DARROW GROUP, INC.]

By:_____

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2012, who executed the foregoing instrument, and acknowledged that he executed the same.

Notary Public, State of Wisconsin
My Commission expires: _____

CITY OF MILWAUKEE

In Presence Of:

Tom Barrett, Mayor

City Clerk

COUNTERSIGNED

Deputy Comptroller

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2012, Tom Barrett, Mayor of the City of Milwaukee, a municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be such Mayor of said municipal corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation, its authority, and pursuant to Resolution File No. 111292, adopted _____, 2012.

Notary Public, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2012, Ronald Leonhardt, City Clerk of the above-named municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be such City Clerk of said municipal corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation, its authority, and pursuant to Resolution File No. 111292, adopted _____, 2012.

Notary Public, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2012, Michael J. Daun, Deputy City Comptroller of the City of Milwaukee, a municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be such City Comptroller of said municipal corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation, its authority, and pursuant to Resolution File No. 111292, adopted _____, 2012.

Notary Public, State of Wisconsin
My commission expires: _____

Approved as to form, content and execution
this ____ day of _____, 2012.

Assistant City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

CITY COSTS LETTER OF COMMITMENT

See attached

EXHIBIT C

PREVAILING WAGES REQUIREMENTS

See attached